

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HERMAN LEWIS,

Petitioner,

V.

JEFFREY A. UTTECHT,

## Respondent.

NO: 4:14-cv-05100-JPH

ORDER ADOPTING REPORT AND  
RECOMMENDATION, DIRECTING  
TRANSFER TO NINTH CIRCUIT  
COURT OF APPEALS, AND  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

Magistrate Judge Hutton filed a Report and Recommendation on October 23,

2014, recommending Mr. Lewis's habeas corpus petition be transferred to the

Ninth Circuit Court of Appeals as a second or successive petition. ECF No. 6.

Judge Hutton further recommended that Petitioner's Motion for Appointment of

Counsel be denied as moot. There being no objections, the Court **ADOPTS** the

Report and Recommendation in its entirety.

### When a second or successive petition

court, that court shall refer it to the court of appeals. Ninth Circuit Rule 22-3(a).

ORDER ADOPTING REPORT AND RECOMMENDATION AND DIRECTING  
TRANSFER TO NINTH CIRCUIT COURT OF APPEALS -- 1

1 Accordingly, **IT IS ORDERED** this case is **TRANSFERRED** to the Ninth Circuit  
2 Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth Circuit Rule 22-3(a).

3 Petitioner is advised this transfer does not of itself constitute compliance  
4 with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an application for  
5 leave to proceed in the Court of Appeals and make the showing required by §  
6 2244(b)(2). Petitioner is directed to consult this statute and Ninth Circuit Rule 22-  
7 3 for further information.

8 **IT IS SO ORDERED.** The District Court Executive is directed to transfer  
9 this action to the Ninth Circuit Court of Appeals. The District Court Executive is  
10 further directed to enter this Order, forward a copy to Petitioner, and close the file.

11 **DATED** this 3rd day of December 2014.

12  
13 *s/ Rosanna Malouf Peterson*  
14 ROSANNA MALOUF PETERSON  
15 Chief United States District Court Judge  
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